

Issue: Federal Change (Individual)

Taxpayer

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Daniel D. Mangiamele
Administrative Law Judge

- (1) Whether taxpayer was Illinois residents in 1991 and were required to file an IL-1040 return for the year ended December 31, 1991?
- (2) Whether penalties should be assessed pursuant to 35 ILCS 5/1001,

5/804 and 5/1005?

Based upon the evidence contained in this record, it is recommended that the Notice of Deficiency be upheld in full for the year ended December 31, 1991.

FINDINGS OF FACT:

1. The Department issued a Notice of Deficiency for the subject taxable year on January 27, 1995. (Dept. Ex. No. 1)

2. Taxpayers' Protest contended that taxpayer was not resident of Illinois and earned no income in Illinois during the taxable year.

3. No Documentation was submitted in support of taxpayer's protest.

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a). In this record, taxpayer have admitted that he did not file an IL-1040 for 1991. The record contains no documentation that taxpayer earned no income in Illinois in 1991.

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.2d 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist. 1978). Taxpayer have not met that burden in this record. The record is clear that taxpayer failed to file an IL-1040 return for 1991 and presented no Documentation in support of Taxpayer's protest.

RECOMMENDATION: It is my recommendation that the subject Notice of Deficiency be upheld as issued plus penalties and interest to date.

Daniel D. Mangiamale
Administrative Law Judge

